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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962.

No. ~~225~~

BROTHERHOOD OF RAILROAD TRAINMEN, ET AL.,
Petitioners,

v.

CHICAGO AND ILLINOIS MIDLAND RAILWAY CO.,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

ROBERT A. STUART
PAUL W. GORDON, JR.
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714 First National Bank Bldg.
Springfield, Illinois
Counsel for Petitioners

SCHNEPP & BARNES, PRINTERS, INC., SPRINGFIELD, ILL.

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IN THE

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No. ———

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Petitioners,

v.

CHICAGO AND ILLINOIS MIDLAND RAILWAY CO.,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Petitioners[1] pray that a writ of certiorari issue to review an order of the United States Court of Appeals for the Seventh Circuit denying a Motion to Vacate Order of Affirmance and Remand the Case with Directions to the District Court to Dismiss the Cause Because the Issues Pre-

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1. Brotherhood of Railroad Trainmen; Brotherhood of Locomotive Firemen and Enginemen, Crystal Lodge No. 408; Brotherhood of Locomotive Engineers, W. J. Hemphill Division No. 160, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, Midland Lodge No. 700; Brotherhood of Railway Carmen of America, Midland Lodge No. 338; the officials of said Brotherhoods and Locals, and members thereof.

sented Therein Have Become Moot, entered in the above entitled case on June 10, 1963.

CITATIONS TO OPINIONS BELOW

The opinion of the Court of Appeals (Rec. p. 1) is reported in 315 Fed. 2d 771. The order of the Court of Appeals denying the Motion to Vacate Order of Affirmance and Remand the Case with Directions to the District Court to Dismiss the Cause Because the Issues Presented Therein Have Become Moot is unreported and is printed in Appendix hereto, *infra*, page 27.

JURISDICTION

The judgment of the Court of Appeals was entered on March 8, 1963 (Rec. 2). A petition for rehearing was denied on April 30, 1963 (Rec. 5). The Order denying the Motion to Vacate the Order of Affirmance and Remand the Case with Directions to the District Court to Dismiss the Cause Because the Issues Presented Therein Have Become Moot was entered June 10, 1963 (Rec. 9). The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254(1).

QUESTION PRESENTED

When the sole issue in a cause becomes moot during an appeal, may the Court of Appeals properly deny a motion to vacate its judgment consented to by all parties in such cause and remand the case to the District Court with instructions to dismiss?

STATEMENT

On September 10, 1962 picket lines were established at the various entrances to the Havana Coal Plant operated by the Chicago and Midland Railroad at Havana, Illinois. These picket lines were established by the Marine Engineers Beneficial Association, hereinafter called MEBA, which do not seek nor purport to represent the employees of the Railroad. The employees of the Railroad refused, for various reasons, to cross these picket lines and a work stoppage developed at this Plant. The Railroad seeking to end the work stoppage filed a complaint with the National Labor Relations Board alleging that the MEBA was engaging in an unfair labor practice, namely, a secondary boycott.

In addition, on September 11, 1963, the Railroad filed a complaint in the Federal District Court for the Southern District of Illinois alleging that their own employees and the Brotherhoods who represented them had caused the work stoppage and praying for injunctive relief. On the same day a temporary restraining order was entered restraining the Brotherhoods, their officials and members from engaging in a work stoppage. After hearing, an order was entered by the District Court directing the issuance of a preliminary injunction so enjoining the Brotherhoods, their officials and members. An appeal was immediately taken from that order to the Court of Appeals for the Seventh Circuit. The Court of Appeals in a two to one decision affirmed said order (Rec. p. 1). Thereafter, on April 30, 1963, the Court of Appeals denied a Petition for Rehearing (Rec. p. 5). A stay of the mandate was granted until June 6, 1963 (Rec. p. 7).

During the course of the appeal, a trial examiner for the National Labor Relations Board was conducting hearings on the Railroad's charge of unfair labor practice against MEBA. On May 6, 1963, the trial examiner filed his Intermediate Report with the National Labor Relations Board finding MEBA guilty of secondary boycott activities and ordering them to cease engaging in such practices at various locations including the Havana Coal Plant (Rec. p. 8; App. p. 12). On May 28, 1963, the Regional Director notified the National Labor Relations Board that MEBA was fully complying with the Intermediate Report of the Trial Examiner. With the removal of the picket lines at the Havana Coal Plant the sole cause of the dispute between the Railroad and its employees and Brotherhoods who represent them ceased to exist and the issues between the parties became moot.

Upon learning of the foregoing facts, the Brotherhoods, their officials and members in accordance with established civil procedure in cases where the issues become moot during appeal, on June 6, 1963, filed in the Court of Appeals a Motion to Vacate Order of Affirmance and Remand the Case with Directions to the District Court to Dismiss the Cause Because the Issues Presented Therein Have Become Moot. The Railroad agreed the issues were moot and consented to the motion by a stipulation which was included as part of the motion. (App. 27.) The Court of Appeals denied said motion on June 10, 1963.

REASONS FOR GRANTING WRIT

The order of the Court of Appeals denying Petitioner's Motion to Vacate its Judgment Because the Issues Have Become Moot is in direct conflict with the decisions of this Court and established civil procedure. When an issue becomes moot during an appeal the proper procedure is to

vacate the judgment and remand with instructions to dismiss. In *U.S. v. Munsingwear, Inc.*, 340 U.S. 36, the Court stated:

> "The established practice of the Court in dealing with a civil case from a court in a federal system which has become moot while on its way here or pending our decision on the merits is to reverse and remand with direction to dismiss.[2]" p. 39

Footnote 2 to said statement contains a long list of prior decisions in support of said procedure. This procedure was followed in *Black v. Amen*, 355 U.S. 600; *Barnes v. Akron, Canton & Youngstown Railroad Co.*, 348 U.S. 893; *S.E.C. v. Harrison*, 340 U.S. 908. In *Mechling Barge Lines v. United States*, 368 U.S. 324, it was held that this practice applies when an appeal to a District Court from an administrative order becomes moot during the appeal. The District Court should vacate its order and remand to the administrative agency to dismiss.

At the time the issues became moot in the present case, with MEBA's compliance with the Intermediate Report of the Trial Examiner, the case was with the Court of Appeals pending further action to review the Court's judgment. The Brotherhoods, their officials and their members, recognizing the issues had become moot, immediately prepared a motion requesting the Court of Appeals to vacate the judgment and remand with directions to dismiss. The Railroad agreed the issues were moot and entered into a stipulation to that effect. (App. p. 25.) The Court of Appeals denied said motion in flagrant disregard for the opinions of this Court previously discussed which were called to their attention in the motion. To disregard this established procedure serves to put the parties to additional expense and time to obtain the desired relief when the parties believed they had the issues resolved. It is not the duty

of any Court to prolong litigation when the parties agree there is nothing to litigate. In view of long-established practice and the authorities heretofore cited, when an issue becomes moot during appeal all prior orders should be vacated and the cause remanded with instructions to dismiss.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

ROBERT A. STUART
PAUL W. GORDON, JR.
HARVEY B. STEPHENS
714 First National Bank Bldg.
Springfield, Illinois
Counsel for Petitioners

APPENDIX

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 13943 - 13944

CHICAGO AND ILLINOIS MIDLAND RAILWAY CO., a corporation,
Plaintiff-Appellee,
v.
BROTHERHOOD OF RAILROAD TRAINMEN, et al.,
Defendants-Appellants.

Appeal from the District Court of the United States for the Southern District of Illinois

MOTION TO VACATE ORDER OF AFFIRMANCE AND REMAND THE CASE WITH DIRECTIONS TO THE DISTRICT COURT TO DISMISS THE CAUSE BECAUSE THE ISSUES PRESENTED THEREIN HAVE BECOME MOOT

NOW COME the Defendants-Appellants herein by Paul W. Gordon, Jr. and Harvey B. Stephens, their attorneys, and move that the Court vacate its order of affirmance and remand the case with Directions to the District Court to dismiss the cause because the issues presented therein have become moot.

In the alternative the Defendants-Appellants move that the Court extend the stay of its mandate for an additional thirty days or until such time as the facts become moot.

In support of said motion Defendants-Appellants, through their attorneys, respectfully suggest:

(1) That the controversy between the parties is moot as is more fully explained in the attached affidavit which is made a part hereof.

(2) That the request of Defendants-Appellants to vacate its order of affirmance and remand the case with directions to the District Court to dismiss the cause is in accordance with established civil procedure in federal cases which become moot while an appeal is pending. In *U. S. v. Munsingwear, Inc.*, 340 U.S. 36, the Supreme Court stated as follows:

> "The established practice of the Court in dealing with a civil case from a court in a federal system which has become moot while on its way here or pending our decision on the merits is to reverse or vacate the judgment below and remand with direction to dismiss.[2]" p. 39

In footnote 2 the Court cited a long list of supporting authorities. To the same effect are *Black v. Amen*, 355 U.S. 600; *S. E. C. v. Harrison*, 340 U.S. 908; *Barnes v. Akron, Canton & Youngstown Railroad Co.*, 348 U.S. 893. In *Mechling Barge Lines v. United States*, 368 U.S. 324, reaffirmed this procedure and held that it applied to administrative orders which became moot while they were on appeal to a District Court.

(3) That the Plaintiff-Appellee has stipulated and consented to said Motion, a copy of said stipulation being attached hereto and by reference made a part hereof.

Brotherhood of Railroad Trainmen, et al.
Defendants-Appellants

By /s/ Paul W. Gordon, Jr.

/s/ Harvey B. Stephens

Their Attorneys

State of Illinois)
County of Sangamon) ss.

HARVEY B. STEPHENS, being first duly sworn, on

oath deposes and says that he is one of the attorneys for the Defendants-Appellants herein and that the statements contained in the above are true.

/s/ Harvey B. Stephens

Subscribed and sworn to before me this 5th day of June, A.D. 1963.

/s/ Robilee Hood,
Notary Public

State of Illinois)
County of Sangamon) ss.

AFFIDAVIT

HARVEY B. STEPHENS, being first duly sworn, on oath deposes and says that he is an attorney duly licensed to practice law in the State of Illinois and the Federal Courts; that he is an associate of the firm of Brown, Hay & Stephens of Springfield, Illinois; that this firm was retained during the month of September, 1962, by the Brotherhood of Railroad Trainmen, Brotherhood of Locomotive Firemen and Enginemen, Brotherhood of Locomotive Engineers, Brotherhood of Railway and Steamship Clerks and Brotherhood of Railway Carmen of America, hereinafter called Brotherhoods, to defend them in a certain suit filed by their employer, the Chicago and Illinois Midland Railway Co., hereinafter referred to as the C. & I. M., against said Brotherhoods in the District Court for the Southern District of Illinois, Southern Division; that in this capacity he is thoroughly familiar with the controversy between the C. & I. M. and the Brotherhoods and states that this controversy arose out of the refusal by certain members of the Brotherhoods to cross a picket line which had been established by the Marine Engineers Beneficial Association, hereinafter called MEBA, at the C. & I. M.'s Havana Coal Transfer Plant, Havana, Illinois.

Affiant further states that he knows that upon the establishment of the picket lines by MEBA the C. & I. M. filed a petition with the National Labor Relations Board alleging that MEBA was guilty of unfair labor practices, namely, secondary boycott activity; that the National Labor Relations Board took jurisdiction of the matter and filed a complaint against MEBA; that hearings were held by a trial examiner of the National Labor Relations Board and evidence taken; that on May 6, 1963, the trial examiner filed his Intermediate Report and Recommended Order with the National Labor Relations Board, a copy of which is attached and made a part hereof; that said Intermediate Report finds that MEBA engaged in unfair labor practices, namely, secondary boycott activities; that said Recommended Order directs MEBA to cease and desist from engaging in such unfair labor practices, including those practices directed at the Midland Railway Company; that MEBA has not filed any objection to said Intermediate Report and Recommended Order; that on May 28, 1963, the Regional Director for the 13th Region of the National Labor Relations Board advised the Executive Secretary of the National Labor Relations Board that MEBA was and is complying in full with the provisions of the Recommended Order; that because of this voluntary compliance with the Recommended Order of the trial examiner of the National Labor Relations Board, the National Labor Relations Board believes the matter can be settled and will take no further action unless MEBA fails to continue to comply with the Recommended Order.

Affiant further states that because of MEBA's compliance with the Recommended Order that it is apparent that MEBA will not again establish picket lines at the various facilities of the C. & I. M., including the Havana Plant and, therefore, the cause of the controversy between the C. &

I. M. and the Brotherhoods has been removed and the issues are now moot.

Further Affiant saith not.

/s/ Harvey B. Stephens

Subscribed and sworn to before me this 5th day of June, A.D. 1963.

/s/ Robilee Hood,
Notary Public

IR-220-63
Springfield, Ill.
Chicago, Ill.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF TRIAL EXAMINERS
WASHINGTON, D. C.

DISTRICT 2, NATIONAL MARINE ENGINEERS' BENEFICIAL ASSOCIATION, AFL-CIO; and LOCAL 25, INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS and CHICAGO AND ILLINOIS MIDLAND RAILWAY COMPANY	Case No. 13-CC-320

Messrs. Gerard C. Smetana and *James Cox*, for the General Counsel.

Messrs. David Scribner and *Lee Pressman*, of New York, N. Y., for the Respondent District 2, MEBA.

Miss Betty H. Olchin and *Mr. Marvin Schwartz*, of New York, N. Y., for the Respondent Local 25, MM&P.

Mr. Thomas H. Morsch, of Chicago, Ill., for the Charging Company.

INTERMEDIATE REPORT AND RECOMMENDED ORDER

Statement of the Case

An original and an amended charge in the above-entitled case[1] were filed by the above-named employer on Sep-

1. Pursuant to the complaint, as finally amended on March 5, 1963, the title has been corrected, deleting "National Marine Engineers' Beneficial Association, AFL-CIO" as a Respondent.

tember 10 and 14, 1962. An original complaint alleging commission of certain unfair labor practices was issued and served on October 25, 1962, by the General Counsel of the National Labor Relations Board. Answers were thereafter filed by the Respondent Unions. Pursuant to notice, hearing sessions were held in Springfield, Illinois, on December 18 and 19, 1962, and in Chicago, Illinois, on January 9 and March 5, 1963, before the undersigned Trial Examiner.

At each session all parties were represented by counsel, and were afforded full opportunity to present evidence pertinent to the issues, to argue orally, and to file briefs.

At the final session, on March 5, 1963, the parties placed in evidence a written and signed stipulation which: (1) includes an amended complaint and amended answers, and (2) disposes of all evidentiary matters with the exception of the issue as to whether or not the Respondent District 2 is a labor organization within the meaning of the Act. The said stipulation and its accompanying documents are attached hereto as Appendix I.

As noted, all parties were accorded the right to file briefs. A brief has been received from General Counsel. On April 8, 1963, the Trial Examiner received from counsel for the Respondent District 2 a wire waiving the filing of his brief.

Upon the evidence in the record pertinent to the issue of "labor organization," pursuant to the aforesaid stipulation, and having given full consideration to the comprehensive brief submitted by Attorney Smetana, counsel for the General Counsel, the Trial Examiner makes the following:

Findings of Fact

I. The business of the employers involved

The Charging Company, herein called Midland, has its principal offices in Springfield, Illinois. It is a common carrier engaged in the transportation by rail of coal and other commodities. In the operation of its business Midland annually receives revenue of more than $50,000 for services performed as a connecting link in interstate transportation between points within the State of Illinois and various other States of the United States.

Commonwealth Edison Company (herein called Edison) is a public utility, with its principal offices in Chicago, Illinois. It is engaged in the production, sale and distribution of electricity. In the operation of its business Edison annually receives in Illinois goods and materials valued at more than $500,000 which are shipped directly from States other than the State of Illinois, and has gross sales of more than $1,000,000. Midland is a wholly owned subsidiary of Edison.

Mississippi Valley Barge Line (herein called MVBL) has its principal office in St. Louis, Missouri, and is engaged in the waterborne transportation of goods, including coal, along the inland waterways of the United States. In the operation of its business, MVBL annually derives revenue of more than $500,000 from such transportation services.

American Molasses Company, a Division of Sucrest Corporation, has its principal office and place of business in Chicago, Illinois. It is engaged in the business of refining sugar. In the operation of its business American Molasses Company annually receives in Illinois goods valued at more than $1,000,000 which

are shipped directly to its Illinois place of business from points outside the State of Illinois.

Midland, Edison, MVBL and American Molasses Company are employers engaged in commerce or in industries affecting commerce within the meaning of the Act.

II. The organizations involved

The complaint as finally amended alleges, the amended answer of District 2 denies, and the amended answer of Local 25 denies knowledge or information sufficient to form a belief: that District 2 is now, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act. The issue will be resolved in a later section.

The complaint as finally amended alleges, the amended answers do not deny, and it is here found that Local 25 is now, and has been at all times material herein, an agent for, and has acted on behalf of and in concert and participation with District 2.

III. The unfair labor practices

A. *Setting*

The amended complaint alleges, the answers do not deny and it is here found that:

(1) In the course of its business Midland regularly transports coal by rail from mines in Central Illinois to certain property owned by Midland in Havana, Illinois. Edison owns adjacent property which extends from the Midland property to the Illinois River, a distance of about 1 mile. When such loaded coal cars arrive in Havana, the employees of Midland move the cars onto the Edison property. Said cars are then moved to a dumper into which the cars are unloaded,

and the coal is then sent on a conveyor chute to docks on the Illinois River, where the chute empties the coal into waiting barges. Pursuant to contracts with Edison, MVBL and another company, Ohio River Barge Line Company then tows the barges from the dock to other sites owned by Edison. MVBL also has an agreement with American Molasses Company pursuant to which it transports unrefined sugar from New Orleans to the American Molasses Company's refinery in Chicago.

(2) At all times material herein, District 2 has been engaged in a labor dispute with MVBL.

(3) At no time material herein has District 2 had any labor dispute with Midland, Edison or American Molasses Company.

B. *The labor organization issue*

Although in its amended answer District 2 denied the allegation of the amended complaint that it is a labor organization within the meaning of the Act, the Trial Examiner is without benefit of any oral argument or brief in support of such denial. Nor does the record reveal any substantial evidence brought forward by District 2 to support its denial.

Attorney Smetana, on the other hand, has submitted not only an excellent analysis of the considerable and largely unchallenged evidence in the record on the point, but also a persuasive argument supporting General Counsel's contention.

The quotations being from the indicated definition clauses of the Act, it would appear that to meet the requirements of a labor organization District 2 must:

(1) be an "organization . . . in which employees

participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work." [Sec. 2(5).]

(2) *not* be an organization of individuals defined by Section 2(11) as being "supervisors" who "have the authority, in the interest of the employer, to hire, transfer, lay off . . . etc. . . . if the exercise of such authority is not of a merely routine . . . nature . . ."

The constitution of District 2, in evidence, states as one of its purposes, that it "shall be the exclusive representative for each and all its members for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment and for negotiation and execution of contracts . . ."

The same constitution provides that membership in District 2 shall be available, among others, to:

> Marine engineers regularly serving on Commercial Motor vessels operating in inland waters . . .

A number of existing contracts are in evidence between inland water employers and District 2. (Rose Barge Line, Ohio River Company — both its Ohio and Illinois divisions, Commercial Transport Corporation, and Illinois River Terminal Company.) Such contracts cover wages, etc., for chief and assistant engineers, and recognize District 2 as the "exclusive bargaining agent" for such persons who therein are referred to as "employees," "engineers" and "engineer officers."

The record contains much competent testimony from several officials representing a substantial majority

of the regulated barge industry on the inland waterways. In summary such evidence establishes:

(1) That marine engineers, whether having the title of chief or assistant, may generally be classified as those who may have a "striker" or helper on the same watch and those who have none.

(2) On inland rivers the role and independent authority of engineers have changed with the advent of diesel-powered towboats. Engine room control, as it existed in the days of steam, is relegated to the past. Control is no longer from below decks, but is directed from the pilot house and by the pilot, not the engineer. In effect, engineers within the area here concerned now serve chiefly as expert maintenance men, not as ship's officers. They are not required, as in the days of steam, to be licensed.

(3) Supervisory authority, as defined in the Act, is mainly restricted to the port engineer, or marine superintendent. The port engineer hires, discharges and lays off personnel.

(4) Except in minor degree the work of chiefs and assistants is routine and of a watch-standing nature. Their authority, too, over strikers — where they are employed — is chiefly of a routine nature, such as that of a more experienced mechanic over a helper when replacing a part or repairing a breakdown.

Conclusions The Trial Examiner concludes and finds that District 2 is a labor organization within the meaning of the Act. It appears to meet fully the requirements set forth at the beginning of this section:

(1) it is an organization of employees, not of supervisors, and exists for the purposes set out in Section 2(5).[2]

C. *The conduct involved*

The amended complaint alleges, the amended answers do not deny, and pursuant to both the aforesaid stipulation and Section 102.20 of the Board's Rules and Regulations, the Trial Examiner finds:

(1) In furtherance of their labor dispute with MVBL, District 2 and Local 25, acting in concert and participation with District 2, have engaged in the following conduct:

a. Since on or about September 9, 1962, the Respondents picketed the premises of Edison and Mid-

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2. There is merit in Attorney Smetana's concluding argument in his brief: "Clearly a finding of 'labor organization' can be based solely upon the evidence from these companies which employ no strikers, thus giving an engineer no one to supervise. (Here he cites *Graham Transportation Co.*, 124 NLRB 960, 962, fn. 11.) However, the General Counsel strongly urges this painless route not be taken for otherwise the historical fiction which the evidence in this case has eradicated would remain to baffle the unwary persons who seek the protection of the Act but happen to find strikers in the engine room. If this Union be a 'labor organization' it should be one for all purposes and in all respects, including those where a marine engineer works with a striker. There is no basis in fact or in law for the current dichotomy in the case law finding marine engineers to be supervisors where strikers exist and nonsupervisors where there are no strikers. Today on inland waterways it is the port engineer who exercises control over the engine room. The towboats are never far from shore and the emergencies created by a steam engine exploding or breaking down, requiring the immediate presence of a knowledgeable person exercising independent judgment in the direction of others in the engine room is no longer requisite or existent." (The "dichotomy" referred to relates to the contrast between the above-cited case and *Globe Steamship Co., et al.*, 85 NLRB 475, where a labor organization status was rejected because marine engineers possessed authority of supervisors under Section 2(11) of the Act.)

land in Havana, Illinois, at times when no MVBL employees were present and at sites remote from places where MVBL vessels were moored. At the same time the Respondents failed to picket several locations of MVBL where MVBL employees were regularly employed.

b. Since on or about September 8, 1962, up to and including September 27, 1962, the Respondents at Havana, Illinois, induced or encouraged individuals employed by persons engaged in commerce or in an industry affecting commerce to engage in a strike or a refusal in the course of their employment to use, transport, or otherwise handle or work on any goods, materials, or perform any services; where an object thereof is: forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other processor, or to cease doing business with any other person.

c. On or about October 12, 1962, the Respondents picketed the dock of American Molasses Company in Chicago, Illinois, where MVBL barges were moored and while employees of neutral companies were working, but when no MVBL employees were present.

(2) As a result of the Respondents' acts above set forth employees of Midland have refused to perform services for their employer.

(3) By the acts and conduct set forth above, and by other means, the Respondents have engaged in, and have induced and encouraged individuals employed by Midland, American Molasses Company, and by other persons engaged in commerce or in industries affecting commerce, to engage in strikes or refusals in the course of their employment to use, manufacture,

process, transport, or otherwise handle or work on goods, articles, materials, or commodities or to perform services, and have threatened, coerced and restrained Midland, American Molasses Company, and other persons engaged in commerce or in industries affecting commerce.

(4) An object of the acts and conduct set forth above was, and is, to force or require Midland, American Molasses Company and other persons to cease using, selling, handling, transporting, or otherwise dealing in the products of, and to cease doing business with, MVBL.

IV. The effect of the unfair labor practices upon commerce

The acts and conduct of the Respondents set forth in Section III, above, occurring in connection with the operations of Midland, MVBL and American Molasses Company, described in Section I, above, have a close, intimate and substantial relation to trade, traffic and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

Upon the basis of the foregoing findings of fact and the stipulation of the parties the Trial Examiner makes the following:

Conclusions of Law

1. District 2, National Marine Engineers' Beneficial Association, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

2. Local 25, International Organization of Masters, Mates and Pilots has been at all times material herein an agent for the above-named labor organization within the meaning of Section 2(13) of the Act.

3. By inducing and encouraging individuals employed by persons engaged in commerce or in an industry affecting commerce to refuse in the course of their employment to transport or handle materials or to perform services, and by threatening and coercing persons engaged in commerce or in an industry affecting commerce, where in either case an object thereof was to force or require persons to cease doing business with MVBL, the Respondents District 2 and Local 25 have engaged in and are engaging in unfair labor practices within the meaning of Section 8(b)(4)(i) and (ii)(B) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices within the meaning of Section 2(6) and (7) of the Act.

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the aforesaid stipulation of the parties, it is recommended that the Respondents District 2, National Marine Engineers' Beneficial Association, AFL-CIO, and Local 25, International Organization of Masters, Mates and Pilots, when acting as agents of District 2, their officers, representatives, agents, servants, employees and all members and persons acting in concert or in participation with either or both of the aforesaid in such capacity, shall:

1. Cease and desist from in any manner or by any means, including picketing, orders, directions, instructions, requests not to cross the picket line, or appeals, however given, made or imparted, or by any like or related acts of conduct, or by permitting any such to remain in existence or effect, engaging in, or inducing or encouraging any individual employed by Common-

wealth Edison Company or its wholly owned subsidiary Chicago and Illinois Midland Railway Company or American Molasses Company, a division of Sucrest Corporation, to engage in a strike or a refusal in the course of their employment to use, manufacture, process, transport or otherwise handle or work on any goods, articles, materials or commodities, or to perform any service, or in any manner or by any means, threatening, coercing, or restraining Commonwealth Edison Company or Chicago and Illinois Midland Railway Company or American Molasses Company, a division of Sucrest Corporation, where in either case an object thereof is to force or require Commonwealth Edison Company, Midland Railway Company or American Molasses Company, a division of Sucrest Corporation, to cease using, selling, handling, transporting or otherwise dealing in the products of or to cease doing business with Mississippi Valley Barge Line Company.

2. Take the following affirmative action to effectuate the policies of the National Labor Relations Act:

(a) Each Respondent shall post in conspicuous places at all of its business offices on the rivers, at all places where meetings of its members employed on the rivers regularly take place, and at all other places where notices to its members are customarily posted, a copy of the notice marked Appendix D or Appendix E, as the case may be, said Appendices being a part of the Stipulation of the parties attached hereto as Appendix I.

(b) Copies of said notices shall, immediately upon receipt thereof by the Respondents from the National Labor Relations Board, and after being duly signed by each of the aforesaid Respondents' representatives, be posted by each of the aforesaid Respond-

ents and maintained by them for 60 consecutive days thereafter. Reasonable steps shall be taken by each of the aforesaid Respondents to insure that their respective notices are not altered, defaced, or covered by any other material.[3]

Dated at Washington, D. C., May 7, 1963.

/s/ C. W. Whittemore

C. W. Whittemore

Trial Examiner.

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3. The Board's attention is respectfully called to the following provision in the Stipulation, paragraph 5:

Should the Trial Examiner find that District 2 MEBA is a labor organization within the meaning of Section 2(5) of the National Labor Relations Act, the Board shall, upon the issuance of the Trial Examiner's Intermediate Report and Recommended Order, enter an Order forthwith as stipulated in Section 4 above, except that the words "A DECISION AND ORDER" should be substituted for the words "THE RECOMMENDATIONS OF A TRIAL EXAMINER," in each of the aforesaid notices.

IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

NO. 13943 - 13944

CHICAGO AND ILLINOIS MIDLAND RAILWAY CO., a corporation, Plaintiff-Appellee, vs. BROTHERHOOD OF RAILROAD TRAINMEN, et al., Defendants-Appellants.	Appeal from the District Court of the United States for the Southern District of Illinois Southern Division OMER POOS, Judge Presiding

STIPULATION

IT IS HEREBY STIPULATED by and between Defendants-Appellants and Plaintiff-Appellee herein that the issues between the parties are now moot; that Plaintiff-Appellee consents to the motion to vacate order of affirmance and remand the case with directions to the District Court to dismiss the cause because the issues presented therein have become moot and that all parties to the action shall bear their own costs.

IT IS FURTHER STIPULATED that neither party hereto claims any damages growing out of the controversy giving rise to this cause of action and each of said parties

hereby expressly waives any such claim for damages heretofore made.

Chicago and Illinois Midland Railway Co.,
a corporation, Plaintiff-Appellee,

By /s/ Graham and Graham,

Its attorneys.

/s/ Hugh J. Graham, III,

Brotherhood of Railroad Trainmen, et al.,
Defendants-Appellants,

By /s/ Harvey B. Stephens,

Their Attorney.

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

CHICAGO 10, ILLINOIS

JUNE 10, 1963

Before

Hon. ELMER J. SCHNACKENBERG, Circuit Judge
Hon. LATHAM CASTLE, Circuit Judge
Hon. LUTHER M. SWYGERT, Circuit Judge

CHICAGO AND ILLINOIS MIDLAND RAILWAY CO., a corporation, Plaintiff-Appellee, No. 13943 - 13944 vs. BROTHERHOOD OF RAILROAD TRAINMEN, et al., Defendants-Appellants.	Appeal from the District Court of the United States for the Southern District of Illinois

This matter comes before the Court on the motion of Defendants-Appellants that this Court vacate its order of affirmance in this appeal and remand the cause with directions to the District Court to dismiss the same because the issues presented therein have become moot; a stipulation of the parties consenting to the allowance of said motion; and an alternative motion of Defendants-Appellants that the issuance of a mandate herein be extended an additional thirty days or until such time as the matter becomes moot.

The Court having considered the same and being fully advised in the premises,

IT IS HEREBY ORDERED that the said motions be, and the same are hereby DENIED.

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